

1 UNITED STATES DISTRICT COURT
2 WESTERN DISTRICT OF WASHINGTON AT SEATTLE

3
4 UNITED STATES OF AMERICA,) C12-01282-JLR
5 Plaintiff,) SEATTLE, WASHINGTON
6 v.) July 18, 2017
7 CITY OF SEATTLE,) Status Hearing
8 Defendant.)
9

10 VERBATIM REPORT OF PROCEEDINGS
11 BEFORE THE HONORABLE JAMES L. ROBERT
12 UNITED STATES DISTRICT JUDGE

13 APPEARANCES:

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The Monitor: Merrick Bob

CPC Representative: Isaac Ruiz

1 THE COURT: Please be seated.

2 The clerk will call this matter.

3 THE CLERK: Case No. C12-1282, United States versus
4 City of Seattle.

5 Counsel, please make your appearances for the record.

6 MR. DIAZ: Good morning, Your Honor. Mike Diaz for the
7 United States.

8 MR. MYGATT: Good morning, Your Honor. Tim Mygatt for
9 the United States.

10 MS. FOGG: Christina Fogg for the United States.

11 THE COURT: Thank you.

12 MR. HOLMES: Peter Holmes, Seattle City Attorney.

13 THE COURT: Mr. Holmes.

14 MR. JOHNSON: Good morning, Your Honor. Josh Johnson
15 appearing for the City of Seattle.

16 THE COURT: Mr. Johnson.

17 MR. WARNER: Ian Warner, Mayor's Office, legal counsel.

18 THE COURT: Thank you.

19 MR. RUIZ: Isaac Ruiz on behalf of the Community Police
20 Commission.

21 THE COURT: Thank you, Mr. Ruiz.

22 Counsel, I do not anticipate that today's hearing is going to
23 be a long one. I will make a few brief introductory remarks to
24 set the stage here, and then I would like to hear from the
25 Department of Justice, from the City, and from the CPC, and then

1 it's my intention to provide you with some guidance about where
2 we go from here.

3 So in terms of setting the stage, I would remind you that, in
4 October of 2016, the City filed proposed legislation with the
5 Court. We gave ourselves a relatively short period of time in
6 order to comment on that. And in what is found in the docket at
7 357, January 6th, 2017, there is an order granting preliminary
8 approval and setting out some areas of concern. The Court then
9 does not have an active role in this while legislative
10 consideration is underway.

11 I would note that in addition to considering the proposed
12 legislation, there were also numerous amendments to some pending
13 terms and to some new areas that have never before been
14 considered by the Court.

15 On May 22nd, 2017, the City Council passes the ordinance, and
16 on June 1, 2017, the Mayor signed it. I am not involved in what
17 has happened since the Mayor signed it and I know nothing about
18 it other than what I read in the newspapers, but it's clear that
19 there is a collective bargaining process underway, which became
20 somewhat newsworthy yesterday.

21 So I asked that we have this status conference, and I set it
22 for today with the expectation that I would hear from the parties
23 and then give you some suggestions of where we are at the present
24 time.

25 So against that backdrop, I'm not sure who is speaking for

1 the government today. Mr. Diaz, is that you?

2 MR. DIAZ: It is me, Your Honor. But the City is a
3 moving party -- is the moving party, so we would defer to them to
4 go first, if that's okay.

5 THE COURT: All right.

6 MR. HOLMES: Good morning, Your Honor. May it please
7 the Court, I'm Pete Holmes, City Attorney for the defendant, City
8 of Seattle.

9 There are many people from the City here today, Your Honor,
10 but I would like to take just a moment to introduce three of
11 them. City Council Members Burgess, Gonzalez, behind me to my
12 right, along with Deputy Chief Carmen Best.

13 THE COURT: Mr. Burgess, would you stand up, please?

14 I think we're losing you some time this fall. Not in the
15 sense of you're getting lost, but going on to other things. But
16 I will tell you that I'm going to be lost without you. I have
17 thought you have been a very responsible voice in this process,
18 and I have appreciated your efforts. So you'll be missed.

19 Ms. Gonzalez -- wherever you are there -- welcome to the
20 club. I applaud the work that you have been doing. I think it's
21 represented the best of what the City Council has to offer, and I
22 look forward to continue to work with you.

23 MS. GONZALEZ: Thank you, Your Honor.

24 THE COURT: Assistant Chief Best, who is back there
25 somewhere, you have big shoes to fill today, but I expect you not

1 to speak with an Irish accent, so ... Thank you.

2 Please continue, Mr. Holmes.

3 MR. HOLMES: Thank you, Your Honor.

4 As the Court is aware, our five-year police reform effort,
5 nearly five years, has produced remarkable results within SPD,
6 particularly on the use of force, as confirmed by a series of
7 positive assessments from the Court's Monitoring Team.

8 Most recently, the City Council has focused on legislation to
9 institutionalize SPD's permanent accountability structure.
10 Throughout, the Executive has bargained in good faith with the
11 Seattle Police Management Association and Seattle Police
12 Officers' Guild. My office has simultaneously managed a
13 considerable amount of related litigation, including these
14 federal proceedings as well as state-court and administrative
15 matters.

16 As directed by the Court, I intend to provide a broad
17 overview of the present status of Seattle's police reform effort,
18 key to these legislative, collective bargaining, and litigation
19 activities, and with reference to our last two status conferences
20 on August 15, 2016, and January 4 of this year.

21 Regarding the accountability legislation in front of the
22 Court, following that last status conference on January 4, the
23 Court issued an order approving, with certain caveats, the
24 proposed accountability legislation that had been submitted last
25 October.

1 THE COURT: Approved it for what? Because it seems to
2 me we part company on that particular question. I approved it to
3 go to the City Council. Certain parties in this proceeding have
4 viewed that as an opportunity to say, "The Court blessed it;
5 we're never going to look back at it." That's not the situation.

6 MR. HOLMES: Yes, Your Honor.

7 We are back here today specifically to talk about what was
8 different between October and the legislation that was
9 submitted -- excuse me, the legislation that was originally
10 proposed in October and that which is accompanying the motion
11 today.

12 The City's June 21 brief, in fact, Your Honor, attaches the
13 entire accountability legislation package, but the brief itself
14 focuses solely on those differences between the original
15 submitted legislation and that which is attached to the 21 brief,
16 June 21. It outlines every provision, Your Honor, that the City
17 Council passed in late May and was signed by the Mayor on June 1,
18 but every provision that contains a substantive change from the
19 provisions that the Court conditionally "approved," if that's an
20 acceptable term, in January. The brief explains further which
21 additions and changes are consistent with the Consent Decree.
22 And I will not repeat here what has been set forth in the City's
23 June 21 brief except to answer any questions the Court may have.

24 THE COURT: Well, the fundamental question that I
25 have --

1 MR. HOLMES: Yes, Your Honor.

2 THE COURT: -- is you're giving me a work-in-progress
3 and asking me to approve it, and that seems to me to be somewhat
4 of a rush to termination and premature.

5 You have, it seems to me, a very significant issue going on
6 right now that broke out into the public on Monday when the
7 Mayor, apparently independent of labor negotiations, implemented
8 the body-camera procedures.

9 How is it that you want me to say what's there now is okay,
10 when it potentially is impacted by developments that I can't
11 predict and am not involved in?

12 MR. HOLMES: It is our hope, Your Honor, that with
13 approval and guidance from the Court, that the ongoing collective
14 bargaining negotiations can be pushed further. We recognize, as
15 I stated to the Court at the January 4 status conference, that we
16 had a problem. We have to continue bargaining in good faith
17 while we try to make progress on the accountability legislation.
18 It's the situation, Your Honor, it's the process that the City
19 collectively -- the Council and the Mayor, the Executive -- have
20 elected to move forward.

21 If we stop and wait to bargain every element with unions, we
22 may not be back before the Court for some time. But this was a
23 way -- a decision that was made by the City as a way of
24 continuing to advance the police reforms with ongoing guidance
25 from the Court while we meet our collective bargaining

1 obligations. It is a difficult situation.

2 THE COURT: Well, it's difficult. And, you know, let me
3 hypothetically suggest the following situation: There is a
4 provision in the accountability package that sets out a certain
5 procedure to be followed. In the course of negotiations with the
6 various labor unions, there is a result which undermines some
7 portion of that process or undermines some portion of the
8 accountability effort, and I'm then going to have to go back and
9 undo the provision in the ordinance, which no longer accurately
10 ensures or procedurally ensures constitutionality in police
11 practices. That's what my dilemma is. And it seems to me that
12 there's little consideration on the part of, well, we're going to
13 work this all out, let's get this stuff in place on some kind of
14 provisional approval, and then, depending on what happens in
15 contract negotiations that I'm not a party to and I don't
16 influence, at least other than from the bully pulpit up here,
17 having to undo things that have been created and are in effect.

18 MR. HOLMES: Indeed, Your Honor. You have previously
19 admonished the parties that you did not want to be -- the Court
20 did not want to be in the position of vetoing legislation that
21 has been enacted by the City Council. We appreciate that as
22 well.

23 Unfortunately, Your Honor, that's a fairly accurate
24 description of what is a complex situation of simultaneously
25 dealing -- negotiating with two unions, moving forward with

1 legislative authority to institutionalize the police
2 accountability structure, while observing the requirements of the
3 Consent Decree. It is a difficult situation, Your Honor.

4 Our proposal, however, is that we keep -- this is, in effect,
5 a second trip here to the Court to inform the Court of our
6 progress on the accountability legislation while bargaining.
7 That bargaining is difficult. The last time I was here I
8 suggested that one of the possibilities might be that if every
9 party was here in the room before the Court, that might get
10 through some of these issues that we have. Short of that, Your
11 Honor, this seems to be the process that circumstances have
12 dictated.

13 THE COURT: Well, we informally know that as the "Holmes
14 party interpleader proposal," and it got the attention that it
15 deserved. You know, I can't very well order people who aren't in
16 front of me to just show up and participate --

17 MR. HOLMES: No, you can't.

18 THE COURT: -- as much as I would like to.

19 MR. HOLMES: If you could, Your Honor.

20 THE COURT: All right. Please, continue.

21 MR. HOLMES: Correct, Your Honor. And, no, I was never
22 suggesting that the Court order parties to appear.

23 But the joinder issue is something that perhaps we will
24 revisit. For now, the course is to attempt to do simultaneous
25 collective bargaining and work on the legislation.

1 THE COURT: Well, there is only one amicus that I am
2 aware of that has said, "Judge, whatever you do, you have to
3 allow contract negotiations to go forward," and that was the CPC,
4 which was surprising since it seems to me that ultimately that's
5 contrary to the public's best interest. But if that's the case,
6 then it seems to me one option is simply to say, "Judge, we have
7 reached an impasse in the contract negotiations. We wish to go
8 forward. Please give us judicial authorization to do this."
9 Somewhat similar to what the Mayor apparently did on Monday when
10 he got -- I'm going to use my phrase -- got tired of trying to
11 deal with some party that wouldn't agree to a reasonable
12 compromise or wouldn't agree without some compensation to flow
13 from it, and then suddenly just said, "All right. Then we're
14 going to implement it."

15 Doesn't that undercut your position that I'm hog-tying you?

16 MR. HOLMES: I would not take the position that the
17 Court is hog-tying us. And certainly yesterday's action by
18 Judge -- by Mayor Murray, Your Honor --

19 THE COURT: An interesting slip there.

20 MR. HOLMES: A Freudian slip, Your Honor.

21 But the action by Mayor Murray, I think, demonstrates the
22 practical problems that the City faces. We have ongoing
23 encounters with community members and the police department even
24 while we're trying to reform it, even while we are trying to
25 comply with the terms of the five-year-old Consent Decree, even

1 while we're trying to negotiate the impacts with our two police
2 unions. It is a practical, complicated situation, Your Honor,
3 and this is the one that we have in front of the Court today.

4 THE COURT: Well, you know, take away as your bottom
5 line that the constitution trumps everything else. And, you
6 know, against constitutional principle, labor contracts will
7 fall, and that message should come across loud and clear.

8 You know, as I have said before, I have no idea what goes on
9 in those negotiations. At least one newspaper has reported that
10 the various provisions, in terms of accountability and police
11 practices, are being held captive to a pay increase. I have
12 already spoken to that, and I'm not going to back down from it.
13 The citizens of Seattle are not going to pay blackmail for
14 constitutional policing. That's simply the bottom line.

15 MR. HOLMES: Your Honor used the term "impasse" a few
16 moments ago, and that is a labor term that could indeed occur, if
17 we are not able to make significant progress. That formal
18 declaration has not occurred. And until that does, we need to
19 continue bargaining. If there is impasse, then there will be
20 arbitration proceedings that will ensue at that point, Your
21 Honor.

22 THE COURT: All right. I keep interrupting you.

23 MR. HOLMES: No. That's --

24 THE COURT: Please continue.

25 MR. HOLMES: -- quite fine, Your Honor.

1 With due respect, we request that the Court approve this
2 legislation, if the Court is willing to indulge this process that
3 we have at present, to approve the accountability legislation
4 that we've submitted. And we will continue to bargain, as I have
5 said, in good faith. And to the extent, though, that the
6 bargaining itself leads to changes in the legislation now in
7 front of the Court, it is the City's intent to bring those
8 changes back to Your Honor for the Court's review and approval
9 before they would be implemented.

10 THE COURT: But does the City understand that that may
11 impact not only changes that are made in the negotiations, but
12 changes to the existing ordinance to reflect those changes?

13 MR. HOLMES: Yes, Your Honor. And the ordinance itself
14 reflects that bargaining is required, Court approval is required,
15 and consequently, even the legislative process contemplates that
16 further amendments, subsequent amendments, may be required.

17 THE COURT: All right. I believe it's in your briefing,
18 396, page 25 of 26, Footnote 78, you make the offer that: To the
19 extent the Court requests, the City can provide a full list of
20 provisions which are subject to collective bargaining.

21 I do not intend to approve the ordinance today because I need
22 to see that. But I'm taking you up on your offer. That will
23 assist me in determining if there are portions of the ordinance
24 that I feel can go forward. But right now I don't know what is
25 subject to collective bargaining, and you can understand that

1 ambiguity is very concerning to me.

2 MR. HOLMES: Correct, Your Honor.

3 We do have one situation where, at least for body cams, I
4 think the City -- the City has taken the position -- the
5 Executive has taken the position that in light of the impacts of
6 community-police interactions that are ongoing, without the aid
7 of body cams, that that was something that needed to be
8 unilaterally implemented, and that is the reasoning behind Mayor
9 Murray's decision yesterday to issue the executive order. So
10 that is one example. There is a longer list.

11 THE COURT: Well, Mr. Holmes, you and I have been at
12 this a long time. You know that I was a champion of dashboard
13 cams at the point that there was active resistance on the part of
14 line personnel. We got over that. The results of that, as far
15 as I can see, have been civility on the part of the public
16 towards the police, civility on the part of the police towards
17 the public, and a record of what happens in these encounters. I
18 have championed body cams. I understand all of the privacy
19 issues to go with it.

20 I am frankly astounded that when the polling that has been
21 conducted by the CPC and the Monitor reflect overwhelming -- 80,
22 90 percent -- approval, one of the groups, that Mr. Ruiz can
23 speak to, that has opposed this at every step of the way is the
24 CPC.

25 I understand the privacy concerns, but, you know, what I hear

1 now is, we finally have come to the realization that the public
2 demands that this happen so that we don't have situations, as
3 we've had within the last two weeks, where we don't know what
4 happened in an encounter. And it seems to me that it betrays
5 the public's trust in the police department. I think, you know,
6 those officers, you know, that honestly report what happened --
7 if they didn't, then there needs to be consequences -- if they
8 did, then the public would better understand how those kinds of
9 tragic situations arise.

10 My frustration on this issue is apparent because I find we
11 are working at cross purposes seemingly on this kind of
12 mother-knows-best mentality that I don't think is appropriate in
13 police practices.

14 MR. HOLMES: Your Honor, I share the Court's
15 frustrations personally. I am here, however, not as Pete Holmes
16 the police reformer, as you noted, being at this for some time,
17 but rather as the City's attorney. And this is that collective
18 entity's process. This is the position that the City finds
19 itself in your Court today. And every observation you have just
20 made, there is no dispute from counsel standing before you.

21 THE COURT: All right.

22 Why don't you go ahead and wrap up, sir?

23 MR. HOLMES: Sure.

24 I really want to, without belaboring bargaining too much
25 further, I did want to give the Court a 30,000-foot view of the

1 status of those, collective bargaining and related litigation.
2 So SPOG has been here, the Seattle Police Officers' Guild, before
3 Your Honor. The Seattle Police Management Agency has not. But
4 it is important to note that both unions jointly signed a letter
5 to Your Honor on August 1, before our August 4 status conference,
6 and stated that they were not opposed to police reform, but,
7 quote, "What both SPOG and SPMA oppose is any non-negotiated
8 breach in its collective bargaining agreement or rights." That's
9 at the docket of 306.

10 So as the Court has reviewed already, we filed our proposed
11 legislation in October, and then the SPMA filed its unfair labor
12 practice complaint, which is still pending in front of the Public
13 Employees Relations Commission, or PERC.

14 On January 5, Your Honor, one day after our last status
15 conference, PERC issued a preliminary ruling requiring the City
16 to defend six counts, six claims, of a failure to bargain in good
17 faith. That is the gravamen of the ULP, the unfair labor
18 practice. The very next day this Court approved, conditionally,
19 that legislation that had been submitted in October. The City
20 submitted the accountability legislation on June 21, and the very
21 next day -- again, these are kind of remarkable when you consider
22 the milestones of the status conferences and then rulings on the
23 ULP -- the very next day, after we had submitted that proposed
24 legislation, PERC rejected a proposal by the City to bifurcate
25 the litigation and focus first on those matters directly related

1 to police accountability. So with regard to SPOG, that pretty
2 much encapsulates where we are with the ULP and SPMA. But with
3 regard to SPOG, you will recall that there was a tentative
4 agreement that had been voted down by the membership before our
5 August 4th status conference. Union leadership was replaced at
6 the same time, and bargaining has since been unproductive,
7 admittedly. The City's labor negotiation team has made it clear
8 that the City is prepared to expedite bargaining on the
9 accountability provisions in the legislation before the Court,
10 and my hope is that the Court's approval of that legislation will
11 help allow those negotiations to pick up steam. That hope,
12 however, has to be tempered with a comment, again, about the
13 executive order issued yesterday.

14 The City and this Court agree, Your Honor, that black lives
15 matter. The City and this Court also agree that body cameras are
16 a fundamental tool for building and maintaining community trust
17 in law enforcement and for ensuring police accountability. This
18 was all too clear in the aftermath of the tragic shooting of
19 Charleena Lyles, where body cameras might have provided greater
20 insights into the events which led to Ms. Lyles -- the loss of
21 Ms. Lyles' life.

22 The Executive began discussions in earnest early this year
23 with SPOG to elevate body cams as a bargaining issue, and
24 immediately following Charleena Lyles' death, we began to
25 earnestly discuss the executive order itself, and it was signed

1 yesterday by Mayor Murray. Absent any demonstrable progress in
2 collective bargaining, Mayor Murray's order demonstrates that the
3 City recognizes its obligation to provide a foundation for
4 constitutional policing and that it will in some instances
5 require that the City act without further delay while continuing
6 to bargain those effects with the unions.

7 So, finally, Your Honor, you have asked for an update on full
8 and effective compliance with the Consent Decree.

9 THE COURT: I have. And let me just set the stage for
10 that. I have been hearing rumblings for some period of time that
11 "Why don't we just declare victory and, you know, all celebrate?"
12 It's not going to happen. I know we have had a change in
13 administration in Washington. I understand that we're going to
14 have a change in the administration in Seattle because Mayor
15 Murray is not running for re-election. The Court is one of the
16 few constants in this process. I would like not to be, but I am
17 and the court is. And, consequently, we are not going to rush to
18 just declare victory and walk away. We have sacrificed too many
19 lives, we have sacrificed too much effort to bring us to where we
20 are now, to prematurely just say, oh, well, we have got it done,
21 let's move on.

22 The consent decree is an order of the Court. Regardless of
23 the point of view of various parties, you know, it's under the
24 Court's control, and it's just not going to get terminated
25 because it's expedient.

1 MR. HOLMES: Your Honor, your comments are quite helpful
2 to the parties.

3 I would remind the Court that, in August, I observed that
4 Your Honor and I were the last two signatories to the Consent
5 Decree that are still in office, and indeed, rather
6 prophetically, that has also become an issue in my own campaign.
7 So I would submit that perhaps I wasn't speaking out of school
8 there.

9 Your Honor, I don't want to belabor the points here. I know
10 that the Court -- I share a lot of the frustrations. I really do
11 appreciate, and I know that the City appreciates, the guidance
12 that we have received today. That's why this status conference,
13 I think, has been singularly important. That's why I do hope
14 that, as a result of this, we can together reassess. We will
15 have the parties, our unions together, and assess the direction
16 that this Consent Decree is going. I, again, share Your Honor's
17 comments, and I have the same goal, to see a reform of the very
18 culture of policing in the City of Seattle. I have said before
19 that I personally believe this is Seattle's first, best, and
20 perhaps last opportunity to demonstrate that constitutional
21 policing can be had, and I do not want to see this opportunity
22 wasted.

23 Thank you, Your Honor.

24 THE COURT: Thank you.

25 Mr. Diaz, I'm going to hear from Mr. Ruiz first.

1 MR. DIAZ: Sure.

2 MR. RUIZ: Thank you, Your Honor.

3 THE COURT: I have been picking on him. So I will give
4 him a chance to comment.

5 Welcome back, sir.

6 MR. RUIZ: Thank you, Your Honor. Good morning. My
7 name is Isaac Ruiz. I am one of the co-chairs of the CPC. We
8 have several commissioners in attendance today, and that includes
9 Co-chairs Reverend Harriett Walden and Enrique Gonzalez.

10 We believe the legislation as it stands today meets the test
11 that the Court has articulated in the past. It moves Seattle
12 toward policing, one, that complies with the constitution; two,
13 that allows police to be effective; and three, that the people of
14 the community can have confidence in.

15 THE COURT: So let me interrupt you the same way I
16 interrupted Mr. Holmes. How do I know that it's going to be
17 constitutional when I don't know what's going to happen with the
18 accountability phase?

19 MR. RUIZ: You don't know right now. And the way the
20 Court knows is as long as this Consent Decree case stays open,
21 Your Honor has jurisdiction to review the final product.

22 THE COURT: But that puts me in the position of undoing
23 something that would be better off left to be done once and done
24 properly as opposed to being done and then putting the Court in
25 the position of saying, no, you didn't get it right, try again.

1 That's fundamentally where we are.

2 MR. RUIZ: I think the principle is the same one that
3 Your Honor applied before, which is to give guidance, before the
4 legislation was submitted to the City Council, about whether the
5 proposal by the Mayor at the time, overall, looking at all the
6 provisions together, was consistent with the letter and the
7 spirit of the Consent Decree. And I think Your Honor has done
8 that before, and I don't think there is a problem with doing it
9 again, when we're reminded of the fact that this Court will
10 retain jurisdiction. So whatever the final product is, Your
11 Honor can do that same level of review, looking at the changes
12 that got made, but also looking at those changes and how they fit
13 with the global package to see whether the total accountability
14 system package accomplishes those three aims that Your Honor
15 articulated back in 2015.

16 THE COURT: Well, there are portions of the Consent
17 Decree that I'm perfectly content with. I mean, it's clearly a
18 work in progress. But, I mean, we have made -- you know, the
19 use-of-force investigation, clearly something that the Court
20 considered extremely important. A procedure is in place. Now
21 we're monitoring the compliance with that procedure. There was a
22 suggestion in a news story recently that somehow we were
23 participating in that, and that's not accurate, as I think
24 everyone knows. But we do continue to review compliance with
25 those procedures. You know, stops and detention I see

1 significant progress on. I noticed that the Council recently,
2 you know, codified some of the bias-free policing practices. All
3 of those are going forward because I think we know that we have
4 come up with a final product, the Court has reviewed it, now
5 they're being implemented.

6 The accountability package is different to me in that, one, I
7 think it is fundamentally important. It's been a flashpoint for
8 a long time. There have been improvements in it there. I think
9 there's tremendous improvement with the inspector general notion.
10 But I don't know what's happening in this black hole over here,
11 which Mr. Holmes shined the flashlight on and said, "You don't
12 want to look." You know, that's a problem for me.

13 MR. RUIZ: I think we would all like to take a peek,
14 Your Honor, but we don't know what's going on there.

15 THE COURT: And you are not supposed to, so ...

16 MR. RUIZ: Right.

17 And I will also say that -- I want to remember that back in
18 August of 2015 Your Honor was concerned that, even though the
19 accountability legislation or accountability reforms were not
20 part of the Consent Decree in the same way that the other
21 subjects that Your Honor has just identified are, that there was
22 the potential that the accountability legislation could do things
23 that affect the Consent Decree process, and Your Honor was
24 careful to note that it wanted to look to see if anything in the
25 accountability recommendations would conflict with the Consent

1 Decree. And I guess what I'm saying is that that ability remains
2 now, and it will remain at the end of collective bargaining.

3 THE COURT: I don't -- it is not a major point, but I
4 think the Consent Decree speaks very clearly to supervision,
5 which is --

6 MR. RUIZ: That's true, Your Honor.

7 THE COURT: -- another effect of accountability.

8 MR. RUIZ: Yeah. And it's also true that the
9 legislation is a key deliverable under the Consent Decree in the
10 sense that the settlement agreement assigned to the CPC
11 evaluating and making recommendations about the accountability
12 system, and the CPC did deliver that. The City Council, through
13 the leadership of Council Member Lorena Gonzalez, delivered this
14 legislation. They passed it unanimously. The Mayor signed it.
15 And that's why we're here today. We're following the process
16 that Your Honor set out for us last year.

17 And so we do ask that the Court enter an order. What the
18 precise terms of the order are, I do not know. But what we
19 want -- but here is what we want in non-legal terms, just opening
20 the door to move forward toward implementation. We recognize
21 that there's a lot of work that still needs to be -- that still
22 needs to be done. The process for appointing key accountability
23 system leaders is just now going to begin. Budget questions
24 remain unanswered. The old accountability system, it hasn't been
25 dismantled, but it's under a lot of stress, as Your Honor knows.

1 We have both an interim OPA director and an interim OPA auditor,
2 and meanwhile, as the Court has observed, the uncertainty of the
3 collective bargaining process is hanging over this legislation.
4 And so everyone in this courtroom knows, as Your Honor has said,
5 that it's not time to declare victory. We cannot say, "Mission
6 accomplished." What we want to see, and what I think the parties
7 in the case want to see, is a complete accountability system up
8 and running as soon as possible.

9 We're thinking of John T. Williams and others who should
10 still be here with us. We are thinking of people like Reverend
11 Harriett Walden who have devoted their lives to the cause of
12 changing police culture in our city. We are thinking of
13 Charleena Lyles and her family.

14 And our bottom line, Your Honor, is, Seattle has been
15 debating those reforms for years, and have the reforms benefited
16 from the investment and time that has been made? Absolutely.
17 The time spent crafting, refining, and reviewing this legislation
18 is literally impossible to count. There are a lot of people in
19 this courtroom today, who haven't been introduced to the Court,
20 who have spent thousands of hours on this legislation, and here
21 we are. The CPC made its recommendation, the City Council
22 refined it and voted for it unanimously, the Mayor signed it, the
23 public supports it, and we hope the Court will say it can go
24 forward. And after that, whatever needs to be done to fully
25 implement this legislation, we hope it can be done without delay.

1 Whatever obstacles stand in the way -- and there are obstacles,
2 Your Honor -- we think it's essential that those obstacles be
3 addressed through proper channels, whatever those may be, and
4 resolved as soon as possible. And, of course, this Court
5 maintains its jurisdiction.

6 This legislation has momentum. We can't let this moment
7 pass. Let's get this implemented. And we want the Court's
8 permission to move forward.

9 THE COURT: Well, what you are going to get is, we're
10 going to start the process of identifying for the Court what are
11 the areas that are still open. The amended legislation contains
12 provisions that I have not seen before and are going to get close
13 scrutiny.

14 I would remind you, because it sticks with me, that the
15 reason we don't have body cameras, in part, has been the
16 consistent opposition of the CPC to body cameras based on privacy
17 concerns, and now we have the Lyles shooting, and people are out
18 saying, "Well, where are the body cameras? The police must be
19 responsible that we don't have body cameras." I have real
20 trouble with that.

21 MR. RUIZ: The position that the CPC took in its filing
22 regarding body cameras, Your Honor, was a revision in policy. We
23 did not propose that the body cams not be implemented. We
24 proposed a revision in the policy which Your Honor did not
25 accept, and that's fine. But the CPC is not standing in the way

1 of body-camera implementation. This is -- this is a
2 collective-bargaining issue.

3 THE COURT: Sir, you're a recent member of the CPC.
4 There are a lot of people sitting out there in the audience who
5 have been here for a long time. We can go back and look at the
6 record where you have been on the record as saying "Do not
7 implement body cameras because of privacy concerns." And please
8 don't come in and say, "It's not us standing the way." You were.
9 And now it's troublesome to me that all of a sudden we're hearing
10 it's all somebody else's fault. This is a frustration for me.
11 And, you know, I'm not blaming you for it, but I think you need
12 to recognize you have a role in this. You had an advisory role,
13 and your advice was "Don't do it until we can resolve these
14 issues." You can call it a pause. That was a convenient term to
15 use. But that was the position you were taking in "Don't
16 implement this."

17 And I don't know if it would have made a difference. But at
18 least I would know what happened in these instances but for a
19 number of parties who have taken the position that, you know, we
20 have too much of a privacy interest in it. So that's my
21 rejoinder to your statement.

22 MR. RUIZ: All right, Your Honor. I'm not sure if
23 there's anything for me to say in response to that.

24 THE COURT: Probably there isn't.

25 MR. RUIZ: I mean, I have gone back and I have looked at

1 the record from before my involvement, and I do think that there
2 are important privacy concerns.

3 THE COURT: Well, remember that lives matter also.

4 MR. RUIZ: We know that just as well as anyone else,
5 Your Honor, and I think Your Honor knows that we know that. We
6 take the issue very seriously. We take the issue of marginalized
7 communities who are disproportionately affected by certain police
8 practices very seriously, and that includes body cameras. And
9 those are some of the interests that we raised during the
10 process.

11 At this time the body-camera issue is not really the reason
12 we're here today. What we want today is permission, Your Honor,
13 after the Court reviews the changes in the legislation, which
14 Your Honor should do, but also look at those changes and how they
15 affect the entire package, and we ask for a ruling that Your
16 Honor believes that the accountability legislation, taken as a
17 whole, is consistent with the aims of the Consent Decree.

18 THE COURT: All right. Thank you, sir.

19 Mr. Diaz, now you get your chance.

20 MR. DIAZ: Thank you, Your Honor.

21 May it please the Court. You have given us some hint at what
22 is concerning to you right now about the motion before you, and I
23 want to address that head on, but if you would indulge me for
24 20 seconds, I just want to say that on behalf of the Department
25 of Justice and the U.S. Attorney's Office here in Seattle, I want

1 to begin by recognizing the impact that the officer-involved
2 shooting death of Charleena Lyles has had on so many. Words are
3 not up to the task at these kinds of moments, but they are what
4 we have. I want to convey our collective, most sincere
5 condolences to Ms. Lyles' family and friends and everyone who is
6 impacted by the shooting in countless ways.

7 With that, Your Honor, your question ultimately goes to: Why
8 am I shooting at a moving target here?

9 THE COURT: Well, let me ask you a more fundamental
10 question.

11 MR. DIAZ: Sure.

12 THE COURT: And if you might want to defer this to
13 Mr. Mygatt. Is the position of the Department of Justice that
14 the City of Seattle is in full compliance at this time?

15 MR. DIAZ: This question -- there's a distinction that
16 has to be made before I can answer that question. Full and
17 effective compliance is different from termination.

18 THE COURT: I understand that. But I want to know the
19 answer.

20 MR. DIAZ: Yep.

21 THE COURT: Full compliance. I didn't ask you about
22 termination.

23 MR. DIAZ: Yep.

24 Full and effective compliance, as we define it, is a process,
25 and that process was started in September of 2015 with a

1 three-year monitoring plan laying out a series of systemic
2 assessments that the monitoring team and the DOJ together and
3 collaboratively engaged in over a year and a half. That process
4 was to cover every aspect of the Consent Decree. And that's what
5 was stated in the monitoring reports, and that's the position we
6 took. We are now done, at the end of that. We are -- the SPD is
7 ten for ten at this point. They didn't pass a couple of them.
8 They've remediated, and they're now back.

9 But right now the question is, what's next? Are we in a
10 position to declare full and effective compliance? Not
11 termination, but full and effective compliance with the terms of
12 the Consent Decree. And that's a conversation I prefer -- and
13 Mr. Mygatt would say the same thing -- that's a conversation that
14 we're going to have with the monitoring team, with the City, as
15 early as tomorrow, and the monitoring team is going to file
16 something on August 10th which gives its views, and it will give
17 us the opportunity to brief-up our position on whether or not
18 they are presently in full and effective compliance.

19 THE COURT: I think you need to be careful. You
20 inadvertently suggested that you were going to have -- your
21 interpretation of the Consent Decree was the terms of the Consent
22 Decree, and those are two quite different subjects.

23 I'm going to re-ask my question --

24 MR. DIAZ: Sure.

25 THE COURT: -- which is, because I think the public is

1 entitled to know, we have heard, based on sort of national-policy
2 statements from the Attorney General and others, that, you know,
3 consent decrees bind the police in an unnecessary way. There's a
4 Consent Decree that's in place here. Is it the position of the
5 Department of Justice that this Consent Decree should be
6 terminated?

7 MR. DIAZ: No.

8 THE COURT: All right.

9 MR. DIAZ: That's not our position. Definitively, it's
10 not our position.

11 THE COURT: I mean, I don't see how you can reach any
12 other conclusion given the -- I mean, I have the view that there
13 is no perfect police force. That when we have citizens who we
14 ask to protect us and we give them weapons and they go out into
15 dangerous situations, that there's a possibility -- I stress the
16 "possibility" -- that tragedies can occur. We train to avoid
17 that situation. That doesn't extinguish the possibility.

18 But on the other hand, I want to ensure that, you know, the
19 Seattle Police Department is a model of doing it right. And
20 events of the last couple of months suggest we have still got a
21 ways to go. And this discussion of, "well, you know, we're ten
22 out of ten," or "we're almost there," it belies the fact that we
23 continue to have these incidents, and we need to learn from them.
24 You know, are we conducting the use-of-force investigation in
25 regards to the Lyles shooting in a proper manner? That's the

1 role of the Monitor, that's the role of the Court. We don't do
2 the investigation. We make sure that it's done in accordance
3 with the policies that are in place.

4 And, you know, I'm troubled with this notion that all of a
5 sudden the whole discussion is full and effective compliance and
6 a two-year waiting period and then termination. That sounds to
7 me like a rush, and I'm not going to permit a rush to
8 termination.

9 And you've answered this question. That is my rejoinder to
10 it.

11 MR. DIAZ: Okay. Thank you, Your Honor.

12 I mean, we agree with -- as we have discussed this internally
13 a lot -- we agree with what you're saying. We are not -- no one
14 is walking away, no one is rushing. There's just a
15 procedural-and-a-Consent-Decree-based conversation that we have
16 to have with the City and with the monitoring team to see where
17 we are now given the ten systemic assessments that have been
18 completed to date and where we go based upon the Consent Decree.

19 I did want to turn --

20 THE COURT: Let me ask you one other question.

21 MR. DIAZ: Sure.

22 THE COURT: How do you propose we conduct a full
23 compliance review of accountability when we don't know what
24 accountability is yet?

25 MR. DIAZ: Right. And that's the question I wanted to

1 turn to, Your Honor.

2 I think our answer is that -- the short answer is any changes
3 to the legislation or any changes to the legislation that affect
4 potentially the Consent Decree are going to be brought before the
5 Court. We're grounded in the Consent Decree. And we look at
6 paragraphs 226 and 227 to guide this. There's a process in
7 there. In 227, there is a notice requirement. When the City
8 determines that something has become, quote/unquote "subject to
9 collective bargaining," they are required to notify the
10 Department of Justice. In turn, the Department of Justice is
11 obligated by the Consent Decree Your Honor signed to then seek,
12 quote/unquote, "alternate means ... if necessary." Right? And
13 so there's going to be a notice when Mr. Holmes and the City,
14 whatever point in the process they reach that they've determined,
15 or the PERC has determined, the Public Employment Relations
16 Commission determines, that the issues in the accountability
17 legislation are subject to collective bargaining, there's going
18 to be a requirement to provide us notice, and then there's a
19 requirement on us to work through that. And so anything --
20 again, to repeat the short answer, anything that changes the
21 legislation is going to come back through this Court after notice
22 and a meet-and-confer between the parties.

23 So, yes, there might be a third bite at the apple,
24 unfortunately, Your Honor, but there might not be. We just don't
25 know that right now.

1 But what I can say -- and I think this is really important --
2 because it's our understanding that, at present, based upon the
3 SPMA's, the management association's ULP, their unfair labor
4 practice, that none of the reforms implemented pursuant to the
5 specific terms of the Consent Decree are being prevented from
6 being implemented because the City -- we're just going off
7 information that we have gotten from the City, and it's publicly
8 available -- is that the PERC has determined that any challenge
9 to any action that the City took before April 2016 is time
10 barred. They didn't bring a ULP timely. They can only go back
11 six months.

12 What that means for us, I think, Your Honor, and it should
13 give you some comfort, is that all the policies, all the
14 training, all the structure that we have set up and the Court has
15 approved, including the FIT, the Force Investigation Team; the
16 FRB, the Force Review Board; the CIT program in whole; the
17 Community Police Commission; the CIC, they are continuing to be
18 implemented and are protected from this unfair labor practice
19 complaint because all of that stuff occurred before April 2016.

20 So I think we're going to have a chance at the appropriate
21 time, after notice and after a meet-and-confer, to see if there's
22 anything else post-April 16th that might be subject to collective
23 bargaining, and then we will come back to the Court. I don't
24 know if that's helpful, Your Honor.

25 THE COURT: It's helpful. It restates what I probably

1 inarticulately stated, which is, it seems to me we have made new
2 progress in a lot of areas and we have implemented. And as far
3 as I know -- I'm not privy to the challenges, but I have not seen
4 any challenges other than these, what's called in this Consent
5 Decree, "supervision" and which we have taken to calling
6 "accountability." And in that, there's lots of questions.

7 MR. DIAZ: Uh-huh.

8 THE COURT: Unfortunately, that accountability aspect
9 sweeps broadly, and it picks up something as, you know,
10 non-accountability-related as body cameras.

11 MR. DIAZ: Uh-huh.

12 THE COURT: And that's exactly the kind of situation
13 that I'm worried about is, what else is out there. I mean, are
14 we going to have an objection to the inspector-general process?
15 Which the Court fully supports, and as far as I know the parties
16 fully support.

17 MR. DIAZ: Uh-huh.

18 THE COURT: So that's -- you know, that's what my
19 concern is. I agree with you that we're dealing with a distinct
20 in-play portion. There are other aspects of this where we are
21 simply monitoring to make sure that we're in compliance.

22 MR. DIAZ: Uh-huh.

23 THE COURT: And once we have determined that there is
24 compliance, then, you know, I'm happy to say, you know, we are
25 now seven-tenths of the way there. But I want to make sure that

1 when we get there we have the entire interrelated processes all
2 working together. And that's where I am today. And I lack that
3 sense of certainty that we're doing that because of activities
4 that are outside the purview of the Court.

5 MR. DIAZ: Yep.

6 And just a few more specific points, Your Honor. We don't
7 object to what your next immediate step is, which is, you know,
8 taking a look at -- you have asked Mr. Holmes for the list
9 referenced in Footnote 78, which I appreciate that you have read
10 up to Footnote 78. But in going through that process,
11 identifying what's in and what's out and what still could be
12 changed, but at the end of the day, I think a couple of points:
13 Again, we're going to have another bite at this apple, if there
14 are changes, if there is anything. And, second, you know, the
15 accountability stuff, to the extent we can start dividing it up,
16 there is some stuff in the accountability of the legislation
17 which is just codifying the policies and training that we have
18 here developed together. That stuff should be unobjectionable.
19 There's other stuff that is new, and we will have to see how that
20 affects the overall structure.

21 But at the end of the day, Your Honor, part of this is --
22 this isn't the first time we have taken together this sort of
23 leap of faith. When you approved the Force Review Board, for
24 example, we didn't know how exactly that was going to work. We
25 had -- there are a million minor questions that don't go to the

1 core of it, but that have to be answered through practice, and
2 we, with the monitoring team, with Mr. Ehrlichman, at the Force
3 Review Board, we worked through all of those processes together
4 in realtime. When an issue came up, we would then -- and it
5 required a policy change, we would come before you and say,
6 "Look, here is a material change to the Force Review Board that
7 you approved. We need to change this. Does this look okay?"
8 and we would argue about it. Sometimes we would debate with the
9 CPC about it. Sometimes we would debate with the City about it.
10 But at the end of the day, we would come to you again. And
11 learning through practice, I think is -- as I think -- it
12 wouldn't be the first time we did that in this case.

13 With that, Your Honor, I think I've addressed the topics that
14 you wished to address. If you have no further questions, that's
15 all.

16 THE COURT: What is the impact if the Court withholds
17 approval until after the collective bargaining agreement is
18 finalized or negotiates -- collective bargaining negotiations?

19 MR. DIAZ: It depends. I think -- these are my -- I'm
20 not an expert in this area. I mean, again, our focus has only
21 been: Is this in conflict with the terms and purposes of the
22 Consent Decree? That was the assignment given to us, "Give us
23 DOJ's opinion on this." So I'm not an expert.

24 My understanding is, that depends -- the impact would depend
25 on how broad that order is. Are we stopping everything related

1 to the accountability legislation, or are we stopping only those
2 things that could impact the Consent Decree? I mean, like I
3 said, codifying certain things, things that are clearly not
4 related to the Consent Decree, it would put a pause and we would
5 lose momentum, I think, a little bit, in having at least some
6 processes go forward.

7 THE COURT: You are beginning to sound like an NFL
8 announcer on this "momentum" question.

9 I mean, this is of such significance that I'm not concerned
10 we're going to lose momentum.

11 MR. DIAZ: Yeah.

12 THE COURT: And we need only look at the issues that
13 have arisen in the last bit to understand that the public is not
14 going to lose interest in this. I mean, they ultimately are the,
15 you know, the reason that we're here.

16 MR. DIAZ: Uh-huh.

17 THE COURT: So I'm less troubled by the losing of
18 momentum than I am doing something in some rush to achieve
19 momentum that we ultimately have to go back and undo.

20 MR. DIAZ: Uh-huh.

21 I mean, at the end of the day, Your Honor -- and this will be
22 my final comment on your question -- at the end of the day, it
23 kind of goes back to, "What is our role here?" both DOJ's and I
24 think the Court's. And I think it's to implement your Court
25 order here. And the question is, does the accountability

1 legislation impact the Court order significantly enough to delay
2 it or to take our time, wait for collective bargaining? Which,
3 again, it's a black box; we're not part of that. And for us,
4 again, we're taking a narrow focus -- whether it was the last
5 administration or this administration, it's a narrow focus on
6 this Consent Decree -- is this going to violate the terms and
7 purposes of the Consent Decree? We don't see the legislation, as
8 written, doing that, and that's why we're supportive of it.

9 THE COURT: All right. Thank you.

10 MR. DIAZ: Thank you, Your Honor.

11 THE COURT: Counsel, I think over the course of a period
12 of time with the parties, I've explained everything that I'm
13 interested in.

14 Mr. Holmes, I will look forward to receiving your list. And
15 to the extent that we look at it and conduct some negotiations,
16 which we do at least consultations with the parties, we may be
17 able to come up with a list of provisions in the ordinance that
18 can go forward. I'm happy to do that. And that seems to me that
19 we'll -- that's about as far as we can go at this time.

20 MR. HOLMES: Thank you, Your Honor.

21 THE COURT: Mr. Ruiz, anything further?

22 MR. RUIZ: No. Thank you, Your Honor.

23 THE COURT: All right.

24 Mr. Holmes.

25 MR. HOLMES: No, Your Honor. Thank you.

1 We are meeting hopefully tomorrow with the United States, and
2 we will prioritize this list that the Court has requested.

3 THE COURT: Mr. Diaz?

4 MR. DIAZ: Nothing further, Your Honor.

5 THE COURT: All right. Then we will be in recess.
6 Thank you, counsel.

7 (Proceedings adjourned.)

8
9 C E R T I F I C A T E

10
11 I, Nickoline M. Drury, RMR, CRR, Court Reporter for the
12 United States District Court in the Western District of
13 Washington at Seattle, do certify that the foregoing pages are a
14 true and accurate transcription of the proceedings to the best of
15 my ability.

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17
18 /s/ Nickoline Drury

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